

**IN THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

UNITED STATES OF AMERICA

v.

DON EUGENE SIEGELMAN

PAUL MICHAEL HAMRICK

GARY MACK ROBERTS

RICHARD M. SCRUSHY

)
)
)
)
)
)
)
)
)
)

CRIMINAL NO. 2:05-CR-119-MEF

**UNITED STATES' SUPPLEMENTAL
PROPOSED JURY INSTRUCTIONS**

COMES NOW the United States of America, by and through Louis V. Franklin, Sr., Acting United States Attorney for the Middle District of Alabama, and Andrew C. Lourie, Acting Chief of the Public Integrity Section of the Criminal Division of the United States Department of Justice, at the close of all the evidence, and respectfully requests that the following Jury Instructions be given to the jury in the above-styled case in addition to the United States' Proposed Jury Instructions filed before trial.

UNITED STATES' SUPPLEMENTAL PROPOSED INSTRUCTION NO. 1

It is proper for an attorney to interview any witness in preparation for trial.

Seventh Circuit Pattern Jury Instructions, § 1.07.

UNITED STATES' SUPPLEMENTAL PROPOSED INSTRUCTION NO. 2

It is not a defense to any crime charged in the indictment that the offer, promise, demand, or receipt of anything of value was made to or by a public official to influence an official act that is actually lawful, desirable, or even beneficial to the public.

Kevin F. O'Malley, Jay E. Grenig & William C. Lee, Federal Jury Practice and Instructions § 27.11 (5th ed. 2000).

UNITED STATES' SUPPLEMENTAL PROPOSED INSTRUCTION NO. 3

It is illegal under the honest services statute for a public official to sell his own official acts, and it is illegal to sell his influence over the official acts of others as well.

United States v. Lopez-Lukis, 102 F.3d 1164, 1168, 1171 (11th Cir. 1997)("if it is illegal for a public official to sell her own vote, it must be illegal for her to sell her vote and her influence over other's [sic] votes as well." ... "Any hard and fast rule that the government cannot use a public official's conduct that is not in an official capacity as evidence of a scheme to defraud the public of an official's honest services would impermissibly narrow the scope of section 1346 and would belie a clear congressional intent to construe the mail fraud statute broadly." (quotation marks omitted)).

UNITED STATES' SUPPLEMENTAL PROPOSED INSTRUCTION NO. 4

It is not a defense to any of the crimes charged in the indictment that a public official did not have the authority, power, or ability to perform the act for which a thing of value was given, offered, demanded, or sought.

2 Kevin F. O'Malley, Jay E. Grenig & William C. Lee, Federal Jury Practice and Instructions § 27.12 (5th ed. 2000). See also United States v. Parker, 133 F.3d 322, 325-26 (5th Cir. 1998) ("Official acts that violate an official's official duty are also not limited to those within the official's specific authority.").

Respectfully submitted this the 13th day of June, 2006

LOUIS V. FRANKLIN, SR.
ACTING UNITED STATES ATTORNEY

ANDREW C. LOURIE
ACTING CHIEF,
PUBLIC INTEGRITY SECTION

/s/ Louis V. Franklin, Sr.
Acting United States Attorney
One Court Square, Suite 201
Montgomery, AL 36104
Phone: (334)223-7280
Fax: (334)223-7560
Email: louis.franklin@usdoj.gov

/s/Richard C. Pilger
Department of Justice, Criminal Division
Public Integrity Section
10th & Constitution Ave, NW
Bond Building - 12th Floor
Washington, DC 20530
Phone: (202)514-1412
Fax: (202)514-3003
Email: richard.pilger@usdoj.gov

/s/ J.B. Perrine
Assistant United States Attorney
One Court Square, Suite 201
Montgomery, AL 36104
Phone: (334)223-7280
Fax: (334)223-7135
Email: jb.perrine@usdoj.gov
ASB-9077-E31J

/s/ Jennifer Garrett
Special Assistant United States Attorney
Assistant Attorney General
Office the Attorney General
11 S. Union
Montgomery, AL 36130
Phone: (334)353-8494
Fax: (334)242-4890
Email: jgarrett@ago.state.al.us
ASB-4600-T77J

/s/ Stephen P. Feaga
Assistant United States Attorney
One Court Square, Suite 201
Montgomery, AL 36104
Phone: (334)223-7280
Fax: (334)223-7560
Email: steve.feaga@usdoj.gov
ASB-7374A60S

/s/ Joseph L. Fitzpatrick, Jr.
Special Assistant United States Attorney
Assistant Attorney General
Office of the Attorney General
11 S. Union
Montgomery, AL 36130
Phone: (334)353-4839
Fax: (334)242-4890
Email: j.fitzpatrick@ago.al.state.us

**IN THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

UNITED STATES OF AMERICA)	
)	
v.)	
)	CRIMINAL NO. 2:05-CR-119-MEF
DON EUGENE SIEGELMAN,)	
PAUL MICHAEL HAMRICK,)	
GARY MACK ROBERTS, and)	
RICHARD M. SCRUSHY)	

CERTIFICATE OF SERVICE

I hereby certify that on June 13, 2006, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel of record.

Respectfully submitted,

LOUIS V. FRANKLIN, SR.
ACTING UNITED STATES ATTORNEY

/s/ J.B. Perrine
Assistant United States Attorney
One Court Square, Suite 201
Montgomery, AL 36104
Phone: (334)223-7280
Fax: (334)223-7135
Email: jb.perrine@usdoj.gov
ASB-9077-E31J